

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 3/21/2019 3:21:35 PM
To: McDavit, Michael W. [Mcdavit.Michael@epa.gov]
CC: Frazer, Brian [Frazer.Brian@epa.gov]
Subject: RE: 404g weekly update - w/ MD included!

Hey Mike,

I still haven't seen the meeting request for the whiteboarding, so I doubt that we will be doing it in late March. Can you please send that to me?

thanks

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From: McDavit, Michael W.
Sent: Wednesday, March 20, 2019 3:38 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Frazer, Brian <Frazer.Brian@epa.gov>
Subject: FW: 404g weekly update - w/ MD included!

See some highlights below:

404(g) Rulemaking

- Planning whiteboard session on partial assumption with AA – request in process, targeting late March.
- Planning staff level engagement with USACE and Army on Assumable/Retained Waters issues Ex. 5 Deliberative Process (DP)
 - Ex. 5 Deliberative Process (DP) Will loop back with AA after meeting. Targeting late April early May for face to face meeting.
- Resolving ESA issues–
 - David F. has staff revisions to ESA 5-way MOA in FL based upon USFWS comments and is sending it to USFWS. Next steps are to reach out individually to NMFS, USACE, and FDEP.
 - We believe there may be a meeting on ESA being scheduled with AZ and OGC and OW, but don't know when.
- Moderating assumption panel at ASWM on April 4th. EPA staff to facilitate panel of states (FL, MD, MN, NE and maybe AZ).
- OST economists have not yet scheduled meeting with OMB to get concurrence on approach to EA.

State Assumption Efforts

- Michigan
 - Drafting paper on process for approval of program revisions. Will include identification of changes from two (of the many) recently passed laws.

Ex. 5 Deliberative Process (DP)

- Arizona – October 2020; looking to shorten timeline for pursuing assumption by 6 months. Region has been regularly reaching out to the state to provide support.
- Oregon – (2022) Hearing on pending legislation held 3/19/19; pursuing legislation to allow for partial assumption, if federal regulations changed.
- Minnesota – (2021) Legislation introduced to pursue assumption.
- Nebraska – Regional staff has not heard anything at staff level but NE may be talking to RA.
- Maryland – Moving forward on assumption; legislation likely next session. Unfortunately, USACE informed MD that they may move to individual permits rather than NWP in retained waters after an assessment of workload and staffing resources.
- Florida
 - FDEP staff says implementing regulations will not likely be finalized until Fall 2019; awaiting Governor's direction prior to publishing rule for comment, FDEP anticipates lawsuit on the rule which could delay finalization.
 - FDEP-USACE MOA – EPA shared suggested revisions to FDEP and USACE in early November. The USACE made edits/comments to EPA suggestions and shared those with FDEP. FDEP staff shared USACE's comments with EPA on March 14, 2019. The internal Florida 404 assumption team has reviewed those edits and summarizes some below. (The team is happy to provide management with additional input and recommendations regarding the USACE edits if requested, and is willing to assist with next steps if asked by the state or R4 management.)
 - Edits of interest:

Ex. 5 Deliberative Process (DP)

404 Assumption-related Lawsuits

- Menominee Lawsuit - brief to the court; deadline extended to 3/26/19.
- Criminal Liability – still tracking Idaho case; no new information.